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For participants only

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Seventieth session (second part)

Provisional summary record of the 3448th meeting
Held at the Palais des Nations, Geneva, on Wednesday, 8 August 2018, at 10 a.m.

Contents

Draft report of the Commission on the work of its seventieth session (*continued*)

Chapter IV. Subsequent agreements and subsequent practice in relation to the interpretation of treaties (*continued*)

Chapter VI. Protection of the atmosphere

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Present:

Chair:	Mr. Valencia-Ospina
Members:	Mr. Argüello Gómez
	Mr. Cissé
	Ms. Escobar Hernández
	Ms. Galvão Teles
	Mr. Hassouna
	Mr. Huang
	Mr. Jaʻloh
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Mr. Nolte
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Peter
	Mr. Petrič
	Mr. Rajput
	Mr. Ruda Santolaria
	Mr. Saboia
	Mr. Šturma
	Mr. Tladi
	Mr. Vázquez-Bermúdez
	Mr. Wako
	Sir Michael Wood
	Mr. Zagaynov

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 10.05 a.m.

Draft report of the Commission on the work of its seventieth session (*continued*)

Chapter IV. Subsequent agreements and subsequent practice in relation to the interpretation of treaties (*continued*) (A/CN.4/L.917 and A/CN.4/L.917/Add.1)

The Chair invited the Commission to resume its consideration of the portion of chapter IV contained in document A/CN.4/L.917/Add.1, beginning with those paragraphs that had been left in abeyance.

Part Three (General aspects) (*continued*)

Commentary to draft conclusion 8 (Interpretation of treaty terms as capable of evolving over time) (*continued*)

Paragraph (17) (*continued*)

Mr. Nolte (Special Rapporteur) said that, following consultations with Mr. Rajput, he wished to propose that the second sentence of paragraph (17), together with the quoted text, should be deleted. The marker to footnote 362 should then be moved to the end of the first sentence, and the footnote itself should be amended to begin with the word "See".

Paragraph (17), as amended, was adopted.

The commentary to draft conclusion 8 as a whole, as amended, was adopted.

Part Four (Specific aspects) (*continued*)

Commentary to draft conclusion 11 (Decisions adopted within the framework of a Conference of States Parties) (*continued*)

Paragraph (38) (*continued*)

Mr. Nolte (Special Rapporteur) said that, following consultations with Mr. Park and Mr. Murphy, he wished to propose that, in the first sentence, the words "that are adopted by consensus" should be deleted. In the same sentence, the word "legally" should be inserted before "binding". In the second sentence, the reference to the 1969 Vienna Convention should be extended to read "under article 31, paragraph 3 (a), (b) and (c)".

Paragraph (38), as amended, was adopted.

The commentary to draft conclusion 11 as a whole, as amended, was adopted.

Commentary to draft conclusion 12 (Constituent instruments of international organizations) (*continued*)

Paragraph (15) (*continued*)

Mr. Nolte (Special Rapporteur) said that, following consultations with Mr. Murphy, he wished to propose that, in the final sentence, the words "or arising from" should be inserted before "an international organization". In the same sentence, the word "reflect" should be replaced with "be relevant for the identification of". In footnote 536, the words "in addition to arising from, or being expressed in, an agreement of the practice of the parties themselves under paragraph 2" should be deleted and replaced with "itself".

Paragraph (15), as amended, was adopted.

The commentary to draft conclusion 12 as a whole, as amended, was adopted.

Commentary to draft conclusion 13 (Pronouncements of expert treaty bodies) (*continued*)

The Chair invited the Commission to resume its consideration of the commentary to draft conclusion 13.

Paragraph (9)

Mr. Murphy said that, in the first sentence, the words "a subsequent agreement or" should be inserted after "constitute". In the same sentence, the reference to the 1969 Vienna Convention should be extended to read "under article 31, paragraph 3 (a) or (b)" and the words "an agreement of the parties or" should be inserted after "requires". In the second sentence, the words "of States parties" should be inserted after "reaction".

Paragraph (9), as amended, was adopted.

Paragraph (10)

Mr. Park said that paragraph (10) appeared to say the opposite of paragraph (9). In the first sentence of paragraph (10), the word "when" should be replaced with "after".

Paragraph (10), as amended, was adopted.

Paragraphs (11) and (12)

Paragraphs (11) and (12) were adopted.

Paragraph (13)

Mr. Park said that, in the final sentence, the word "would" should be replaced with "may", to align it with the final sentence of paragraph (14).

Mr. Nolte (Special Rapporteur), pointing out that the word "would" should be read together with the conjunction "if" later in the sentence, said that the sentence as currently formulated in fact said what Mr. Park wanted it to say. It would be preferable therefore to retain the original formulation.

Mr. Rajput said that he supported Mr. Nolte's position, since using the word "may" would change the entire complexion of the sentence.

Mr. Park pointed out that the final sentence of paragraph (14) was almost identical to the final sentence of paragraph (13), except that it contained the formulation "depending on" instead of "if".

Mr. Rajput said that, in order to achieve textual consistency, the final sentence of paragraph (13) should be amended to align it with the final sentence of paragraph (14).

Mr. Nolte (Special Rapporteur) said that there was no substantive reason for making such a change, which would constitute repetitiveness rather than consistency.

Paragraph (13) was adopted.

Paragraphs (14) and (15)

Paragraphs (14) and (15) were adopted.

Paragraph (16)

Mr. Nolte (Special Rapporteur) said that Mr. Murphy had proposed the deletion of the final part of the first sentence on the grounds that it was not necessary. While he agreed that it was not strictly necessary, he thought that it did no harm and would therefore prefer to retain it.

Paragraph (16) was adopted.

Paragraphs (17) to (19)

Paragraphs (17) to (19) were adopted.

Paragraph (20)

Mr. Murphy said that a significant amount of time had been devoted to paragraph 4 of draft conclusion 13 in the first part of the session. Given the careful negotiations that had taken place, it would be preferable to reflect in paragraph (20) the wording of the draft

conclusion. To that end, the second sentence of paragraph (20) should be redrafted to read: "Paragraph 4 provides that this draft conclusion is without prejudice to the contribution that such bodies make to the interpretation of treaties under their mandates."

Mr. Nolte (Special Rapporteur) said that he could agree to the change on the understanding that that it would not lead to a general questioning of the remainder of the commentary to paragraph 4.

Paragraph (20), as amended, was adopted.

Paragraph (21)

Mr. Nolte (Special Rapporteur) said that he wished to insert a reference to the 2012 advisory opinion of the International Court of Justice on *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*. In that case, the Court had recognized that 30 years of experience of the application of a particular provision of a treaty had developed that provision in a certain way. He proposed the addition of a sentence which would read: "In an advisory opinion regarding an employment case before the Administrative Tribunal of the International Labour Organization, the Court has interpreted the principle of equality of access to courts and tribunals in the light of 'the significant differences between the two general comments by the Human Rights Committee on article 14 (1) of the International Covenant on Civil and Political Rights', emphasizing that the later comment, 'adopted in 2007 on the basis of 30 years of experience in the application of article 14, gives detailed attention to equality before domestic courts and tribunals'." The inclusion of the reference to the case, which was an immediately pertinent source, would provide an important nuance to what had been said in the Diallo case.

Sir Michael Wood, supported by **Mr. Murphy**, said that the case mentioned by Mr. Nolte was less pertinent than the already quoted case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*. In the latter case, the Court had expressly addressed the question of how far it was bound by decisions of human rights treaty bodies. Since footnote 643 already contained a reference to the advisory opinion Mr. Nolte had quoted, it was not necessary to include in the body of the text a long passage on it, which would only distract from the key statement in the Diallo case.

Mr. Jalloh said that adding valuable jurisprudence would serve to strengthen the commentary and as such it should be included.

Sir Michael Wood, noting that footnote 643 also made reference to the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, which contained an important reference to a general comment of the Human Rights Committee, said that there was no need for an additional reference to case law.

Mr. Jalloh said that the fact that the footnote 643 contained a reference to the advisory opinion on *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization* did not preclude the inclusion of a statement about that advisory opinion in the text of the commentary, especially if it lent the commentary more authority.

Mr. Nolte (Special Rapporteur) said that the reason that he had proposed to highlight the particular part of the advisory opinion that he had quoted was because it referred to 30 years of continuous application of a practice. If a practice went uncontested for so long a time, it acquired weight — that was precisely the focus of the project.

Mr. Park suggested, as a compromise, that rather than include a sentence about the advisory opinion in the body of the commentary, the reference to it in footnote 643 should be supplemented with an explanatory phrase.

The Chair said that it would be inadvisable to provide supplementary information in connection with only one reference in the footnote. He suggested that simply leaving the reference in the footnote as originally drafted was sufficient; future readers could look up the relevant sections of each reference if they so wished.

Paragraph (21) was adopted.

Paragraph (22)

Mr. Murphy, noting that footnote 644 contained a reference to the African Commission on Human and Peoples' Rights, proposed inserting, in the first sentence, the words "and bodies" after the phrase "Regional human rights courts".

Mr. Park said that although the current paragraph had been adopted without comment in the first reading, he was now of the view that the language at the beginning of the second sentence was too strong, given the paragraphs that followed. He therefore proposed replacing "Many domestic courts consider" with "There is a tendency that domestic courts consider".

Mr. Nolte (Special Rapporteur) said that he considered the second sentence to be accurate. Although Mr. Park's proposal was not vastly different in substance, the way it was expressed cast doubt on the content; he would therefore prefer to retain the sentence in its current formulation. He would like to make a proposal to supplement footnote 645 with a reference to a recent Spanish Supreme Court decision according to which the pronouncements of the Committee on the Elimination of Discrimination against Women were binding, under both international law and national law. While he was not certain that the court's view was correct in respect of international law, it was important to make mention of the case in the commentary. Having read out an excerpt of the Supreme Court decision in question, he said that he would like to supplement footnote 645 with a reference to the decision, preceded by the words "But see also".

Mr. Park said that he continued to believe that the first sentence should be amended in line with his previous proposal. In footnote 648, which related to paragraph (23), it was stated that States parties were obliged only to take account of their assessments in good faith and paragraph (24) started with the words "Court decisions have not always fully explained the relevance of pronouncements". Domestic judges would be reviewing the commentary closely and would adjust their approaches accordingly. It was therefore important to tone down the first sentence and reflect reality as accurately as possible.

Sir Michael Wood said that he supported supplementing footnote 645 with a reference to Spanish Supreme Court decision. He agreed that the language at the beginning of the second sentence of paragraph (22) was too absolute and proposed that the phrase "Many domestic courts consider" should be replaced with "Various domestic courts have considered".

Mr. Murphy said that he was not opposed to maintaining the original wording of the second sentence, but could support the proposal made by Sir Michael Wood. He would support the reference to the decision of the Spanish Supreme Court in footnote 645, so long as it was a mere citation, rather than a citation accompanied by an explanatory phrase, in which case he would like to have an opportunity to review the decision.

The Chair said that he was in favour of supplementing footnote 645 with a simple citation, as had been done with the other references in that footnote.

Mr. Saboia said that he had been satisfied with the original wording of the second sentence, but could go along with the proposal made by Sir Michael Wood.

Ms. Escobar Hernández said that she supported the proposal by Sir Michael Wood in respect of the second sentence of the paragraph. She would welcome the inclusion of the additional reference in footnote 645, without which the Commission's report on the topic would not be complete. Indeed, the case in question was relevant not only because it was so recent and had prompted a number of reactions internationally, but also because, as part of its decision, the Spanish Supreme Court had indirectly quashed the decisions of the lower courts. She suggested that, rather than preceding the citation with the words "But see", a short explanatory phrase in parentheses could be included to accompany the footnote; however, she would defer to the Special Rapporteur in that regard.

The Chair suggested that, rather than the words "But see", the phrase "See also" or another similarly neutral phrase could be used to introduce the footnote.

Mr. Nolte (Special Rapporteur) said that he agreed with the proposal by Sir Michael Wood regarding the second sentence, which should also help address the concerns

expressed by Mr. Park. He suggested that footnote 645 should be supplemented with a simple citation to the decision of the Spanish Supreme Court, preceded by the words "But see", which he did not view as problematic, since the citation related directly to the phrase, in the second sentence of paragraph (22), "while not being legally binding on them as such", and in that respect, it differed from the other cases cited in the footnote.

Paragraph (22), as amended, was adopted.

Paragraphs (23) to (25)

Paragraphs (23) to (25) were adopted.

The commentary to draft conclusion 13 as a whole, as amended, was adopted.

The Chair invited the members of the Commission to resume their consideration of the portion of chapter IV contained in document A/CN.4/L.917, with specific regard to paragraphs 11 and 12, whose adoption had been left in abeyance.

C. Recommendation of the Commission

Paragraph 11

The Chair said that the proposed recommendation, which had been circulated to the members, read:

"At its ... meeting, on ... 2018, the Commission decided, in accordance with article 23 of its statute, to recommend that the General Assembly:

(a) take note of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties in a resolution, annex the draft conclusions to the resolution, and ensure their widest dissemination; and

(b) commend the draft conclusions, together with the commentaries thereto, to the attention of States and all who may be called upon to interpret treaties."

Mr. Huang said that, similar to the recommendation put to the Commission during its consideration of the chapter of the report on the topic "Identification of customary international law", the recommendation on the current topic was worded ambiguously in the Chinese version so that the word "resolution" in subparagraph (a) might be understood to refer to a resolution by the Commission, rather than by the General Assembly. He proposed that the phrase "in a resolution" should be moved closer to the words "General Assembly" for the sake of clarity.

The Chair said that it was important that all language versions of important, formal decisions of the Commission, such as the current recommendation to the General Assembly, should be worded with particular care.

Paragraph 11, as amended, was adopted, subject to its completion by the Secretariat.

D. Tribute to the Special Rapporteur

Paragraph 12

Paragraph 12 was adopted by acclamation with minor editorial changes.

Mr. Huang said that he would like to join others in expressing his deep appreciation to the Special Rapporteur. However, he wished to have it placed on record that, in his view, the Commission should take effective measures to prevent its work from becoming a purely academic exercise and to avoid a tendency to produce overly and increasingly long reports on the topics under its consideration and the corresponding commentaries. Those reports in turn fed into long annual reports of the Commission to the General Assembly; Member States had already expressed their concern and dissatisfaction in that regard. One example was the Commission's Guide to Practice on Reservations to Treaties (A/66/10/Add.1), which had totalled over 450 pages, and which, according to the feedback he had received, very few legal officers around the world had ever read in its entirety. In stark contrast was

chapter V, on identification of customary international law, of the Commission's draft report on the work of its seventieth session, which came to a mere 36 pages. The quality of the latter outcome was far better than the former, with the result that valuable assistance could be provided to Member States. The Special Rapporteur on subsequent agreements and subsequent practice in relation to the interpretation of treaties would have done better to cut the text of the draft conclusions and the commentaries thereto by a third or by half.

Mr. Nolte (Special Rapporteur) said that he would like to thank all those who had contributed to the work on the topic over the years, in particular the Chair and all the other members of the Commission, past and present. He mentioned the support of two past members of the Commission: Ms. Marie Jacobsson and Mr. Rohan Perera. He also thanked the Secretariat, and especially Mr. David Nanopoulos and, before him, Mr. Gionata Buzzini. Lastly, he expressed his gratitude to his assistants in the Commission and at Humboldt University Berlin, in particular to Ms. Janina Barkholdt, who had helped with the work for some years and who was present in the meeting room.

The portion of chapter IV contained in document A/CN.4/L.917, as amended, was adopted.

Chapter IV of the draft report of the Commission as a whole, as amended, was adopted.

Chapter VI. Protection of the atmosphere (A/CN.4/L.919 and A/CN.4/L.919/Add.1)

The Chair invited the Commission to consider chapter VI of its draft report, beginning with the text contained in document A/CN.4/L.919.

A. Introduction

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

B. Consideration of the topic at the present session

Paragraph 3

Mr. Rajput proposed that, in the second sentence, the word "considered" should be deleted and the phrase "in certain situations" added at the end.

Sir Michael Wood said that, in the last sentence, the word "science-heavy" would be preferable to "scientific-heavy", and the phrase "ensure that adequate rules of procedure applied to such disputes" was very general and might be worth reviewing.

Mr. Rajput said that the word "scientific-heavy" could perhaps be replaced with "science-dependent", which was used in draft guideline 12 and the commentary thereto.

The Chair said that the paragraph would be amended in line with the proposals by Mr. Rajput. It should be left to the Special Rapporteur to review the phrase highlighted by Sir Michael Wood and make any changes necessary.

Paragraph 3 was adopted on that understanding.

Paragraphs 4 to 8

Paragraphs 4 to 8 were adopted.

New paragraphs 9 and 10

The Chair said that two additional paragraphs, 9 and 10, would be inserted at the end of the document. The texts of the paragraphs had been circulated among members in all the official languages of the United Nations under the symbol ILC(LXX)/INFORMAL/5. The Commission would consider the paragraphs once it had adopted document A/CN.4/L.919/Add.1.

New paragraphs 9 and 10 were left in abeyance.

The Chair invited the Commission to consider the portion of chapter VI of the draft report contained in document A/CN.4/L.919/Add.1.

C. Text of the draft guidelines on the protection of the atmosphere, together with the preamble, adopted by the Commission on first reading

1. Text of the draft guidelines, together with preamble

The Chair said that the Secretariat should harmonize the title of section C, in which the definite article was included before the word "preamble", with heading 1, in which it was omitted.

It was so decided.

Paragraph 1

Paragraph 1 was adopted.

2. Text of the draft guidelines, together with preamble, and commentaries thereto

Paragraph 2

Paragraph 2 was adopted.

Protection of the atmosphere

General commentary

Mr. Park proposed that the words "concerning the protection of the atmosphere" should be inserted at the end of the first sentence of the chapeau.

Mr. Murase (Special Rapporteur) said that, for the sake of consistency with the general commentaries to the draft texts on other topics, a new paragraph should be inserted, to read: "As is always the case with the Commission's output, the draft guidelines are to be read together with the commentaries."

It was so decided.

Mr. Tladi said that the Secretariat should ensure that the placement of the paragraph was uniform across all the topics. While he did not object to Mr. Park's proposal, he preferred the existing, broader formulation.

Mr. Vázquez-Bermúdez said that he agreed with Mr. Tladi that the first sentence of the chapeau should be left as it stood.

The chapeau of the general commentary was adopted.

Commentary to the preamble

Paragraph (1)

Mr. Murase (Special Rapporteur) said that a number of members had submitted comments to him in advance of the meeting, for which he was grateful. Mr. Tladi had proposed the deletion of the paragraph, on the grounds that the information contained therein would be of little interest to the Sixth Committee. In his view, however, it might be useful to inform delegates in the Sixth Committee that language from some controversial proposed guidelines had been moved to the preamble. He would therefore like to retain the paragraph until the second reading, with the exception of the last sentence, which could be deleted, in keeping with a proposal by Mr. Murphy.

Mr. Park said that he was in favour of deleting the last sentence.

Mr. Tladi said that he had revised his opinion concerning the deletion of the paragraph in its entirety; he continued, however, to consider the final sentence to be problematic and would support its deletion.

Mr. Rajput proposed that, in the first sentence, the words "the particular topic" should be replaced with "a particular topic".

Mr. Nolte said that, to make the second sentence clearer, the words "concerning the topic" and the phrase "with language from some guideline proposals being formulated as preambular text" should be deleted.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Mr. Tladi said that, to improve the flow of the third sentence, it should be redrafted to read: "The atmosphere is the Earth's largest single natural resource and one of its most important."

Mr. Rajput said that the source cited in footnote 7 concerned air as a natural resource. In order to strengthen the link between the footnote and the two sentences to which it related, he proposed that the words "As a natural resource" should be inserted at the beginning of the antepenultimate sentence.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Mr. Murphy said that, in footnote 8, the hyperlink pointing to the text of the Minamata Convention on Mercury should perhaps be replaced with a reference to the appropriate volume of the United Nations Treaty Series.

The Chair said that the Secretariat would review the use of hyperlinks throughout the document.

Paragraph (3) was adopted on that understanding.

Paragraph (4)

Mr. Park said that he would prefer to use more cautious language in the third sentence. He therefore proposed that the words "Scientific research reveals that" should be added at the beginning of the sentence.

Paragraph (4), as amended, was adopted.

Paragraph (5)

Paragraph (5) was adopted.

Paragraph (6)

Ms. Oral said that the sources cited in footnote 16 did not support the claim made in the sentence to which the footnote related. She therefore proposed replacing those sources with other, more pertinent ones.

Mr. Murase (Special Rapporteur) said that, when the Commission had adopted the commentaries in 2017, the sources cited in footnote 16 had been checked. If a review of the sources had become necessary since then, it could perhaps be conducted on second reading.

Paragraph (6) was adopted on that understanding.

Paragraphs (7) and (8)

Paragraphs (7) and (8) were adopted.

Paragraph (9)

Mr. Rajput said that the last sentence was somewhat awkward and could be deleted, particularly as the Commission's decision to employ the expression "a pressing concern of the international community as a whole" was already very well explained in the sentences that preceded it.

Mr. Murase (Special Rapporteur) said that the sentence could perhaps be moved to footnote 20.

Ms. Oral said that the inclusion of the sentence was appropriate, as it helped to clarify why the Commission had opted not to use the expression "common concern of humankind", which was more frequently found in treaties than "a pressing concern of the international community as a whole".

Mr. Nolte, supported by **Mr. Ruda Santolaria**, said that the sentence had a second dimension that should be taken into account. When the Commission had discussed the expression "common concern of humankind", some members had argued that it was too strong. The Commission had subsequently decided to employ a widely used expression that, to readers unfamiliar with the Commission's terminology, might sound similar. The sentence helped such readers to understand that an effort had been made to nuance the language and, consequently, should not be hidden away in a footnote.

Mr. Vázquez-Bermúdez said that he agreed that the sentence should be located in the text of the commentary, rather than in a footnote. It would remind members of why the Commission had chosen the expression "a pressing concern of the international community as a whole" and help States to assess that choice. Moreover, it was his understanding that the expression "common concern of humankind" would be the subject of further deliberations on second reading.

Mr. Huang said that the sentence seemed excessive and unrelated to the sentences that preceded it. His preference would be to delete it altogether; however, moving it to footnote 20 would be an acceptable compromise.

Mr. Jalloh said that he supported the retention of the sentence, which provided a useful explanation, in the text of the commentary. The Commission would, in any case, revisit the text on second reading, once States had been given an opportunity to comment on it. It should be noted that the expression employed by the Commission in the fourth preambular paragraph was referred to as both "a pressing concern of the international community as a whole" and "pressing concern of the international community as a whole".

Mr. Murase (Special Rapporteur) said that, in the light of the observations made by other members, he would be in favour of keeping the paragraph as it was.

Paragraph (9) was adopted.

Paragraph (10)

Paragraph (10) was adopted.

Paragraph (11)

Mr. Tladi said that, in the first sentence, a reference should be included to the Johannesburg Declaration on Sustainable Development. He also proposed the addition of a new fourth sentence, to read: "The Johannesburg Declaration expresses the resolve to pay attention to the 'developmental needs of small island developing States and the least developed countries'." He further proposed the insertion, at the end of that sentence, of a footnote reference to paragraph 24 of the Declaration, which was the source of the quoted text.

Mr. Murphy said that, in the interests of consistency, the relevant year should be included before the reference to the Declaration in the first sentence. If appropriate, reference should also be made to the Rio+20 outcome document.

Paragraph (11), as amended, was adopted on that understanding.

Paragraph (12)

Paragraph (12) was adopted.

Paragraph (13)

Mr. Petrič said that sea-level rise was a common concern of humankind. Some small island States and some low-lying coastal States, such as Bangladesh and the Netherlands, were particularly at risk and thus might be particularly concerned. Accordingly, special attention was paid to them in the sixth preambular paragraph and in the paragraph under discussion. The wording used was, however, a little exclusive. Certain small island States might make the transition from developing to developed, while certain low-lying coastal States that would be particularly affected by sea-level rise were already developed. He would therefore prefer to make the second sentence more inclusive by redrafting it to read: "It draws particular attention to the special situation of low-lying coastal areas and small island States, in particular developing States, due to sea-level rise."

Mr. Nguyen said that, at the end of the last sentence, the order of the phrases "coastal areas" and "small island developing States" should be inverted, as it was necessary to highlight the particular concern of small island States rather than the coastal areas of other countries.

The Chair asked whether Mr. Petrič's proposal to delete the word "developing" also affected the last sentence of the paragraph.

Mr. Petrič said that it would apply only to the second sentence.

Mr. Murase (Special Rapporteur) recalled that, at the Commission's sixty-ninth session, the question of whether to also refer to developed States had been discussed; some members had argued against doing so, as it would divert attention from developing States. He proposed updating footnote 30 by replacing the reference to the report of the International Law Association's 2016 Johannesburg Conference with a reference to the report of the Association's recent 2018 Sydney Conference.

Mr. Jalloh said that it was important to bear in mind that "small island developing States" had been recognized by the United Nations as a distinct group of developing countries facing specific social, economic and environmental vulnerabilities. The original formulation should therefore be retained; however, to accommodate the valid point raised by Mr. Petrič the words "and other States" could be added at the end of the sentence to broaden the scope.

Mr. Huang said that, while he agreed with Mr. Petrič's point, that was not the appropriate place to make it. Paragraph (13) addressed the sixth preambular paragraph, which referred to "low-lying coastal areas and small island developing States". It would therefore be inappropriate to add any further elements not provided for in the preamble.

Sir Michael Wood said that he shared the view expressed by Mr. Huang.

Mr. Ruda Santolaria said that, while he understood Mr. Petrič's concern, paragraph (13) made reference to large low-lying coastal areas, which could encompass all categories of States. It was important to highlight small island developing States since they faced an extremely serious threat to their survival due to sea-level rise. That had been one of the central considerations taken into account in the discussions on the legal effects of sea-level rise.

Mr. Petrič said that the aim of the topic was to increase awareness among States of their responsibility concerning atmospheric pollution and its consequences. It was very important for the Commission to emphasize that it was a problem faced by the international community as a whole, without minimizing the particular needs of developing countries. He would support the adoption of Mr. Jalloh's proposal, which seemed to capture his concern. He occasionally had the impression that, in the Commission, formal considerations were given more weight than substantive concerns.

Mr. Park said that Mr. Petrič had raised an important and sensitive issue. He would support the proposal put forward by Mr. Jalloh on two conditions. First, from a technical perspective, as Mr. Huang and Sir Michael Wood had mentioned, if the second sentence of paragraph (13) was amended, the Commission would have to revisit on second reading the content of the sixth preambular paragraph. Second, if the amendment was introduced in the

second sentence, it would be necessary to decide whether to also amend the last sentence of paragraph (13) to the same effect.

Mr. Vázquez-Bermúdez said that, when the sixth preambular paragraph had been drafted, the words "in particular" had been added in reference to the special situation due to sea-level rise of low-lying coastal areas and small island developing States precisely to emphasize those two groups of States, without excluding the potential impact on other States. While he understood the concerns expressed by some members, the second sentence of paragraph (13) very closely followed the text of the sixth preambular paragraph and it would therefore not be appropriate to change it. If additional elements were to be added, a new third sentence would be necessary, along the lines of: "The reference in the preamble to 'in particular' refers to the fact that other States are also affected."

Ms. Oral said that, as the group of small island developing States belonged to a broader group — the Alliance of Small Island States — Mr. Petrič's proposed amendment would not be incorrect. However, since reference was made in the sixth preambular paragraph to "small island developing States", it would be difficult to change that reference in paragraph (13). She would therefore go along with the compromise proposed by Mr. Jalloh.

Mr. Rajput recalled that, in the Drafting Committee in 2017, the more general formulation "low-lying coastal areas" had been chosen precisely to encompass any State or area affected by sea-level rise, regardless of its stage of development. Mr. Nguyen had made a valid point concerning the last sentence, and perhaps the reference to "large, heavily populated and low-lying coastal areas" might be too restrictive and could be replaced with the language of the preambular paragraph itself.

Mr. Murphy said that he was sympathetic to Mr. Petrič's point that the Commission should recognize that many different kinds of States could be affected by a failure to properly protect the atmosphere. However, in that instance, it was necessary to bear in mind that the preamble followed a sequence that must also be respected in the commentary: the fourth preambular paragraph referred to the international community as a whole, the fifth to developing countries and the sixth to low-lying coastal areas and small island developing States. If the Commission wished to comment broadly on the effects on all States, it would have to do so in the commentary to the fourth preambular paragraph. The solution proposed by Mr. Jalloh would not resolve the issue, as using the formulation "draws particular attention to" followed by "all other States" would not, in fact, be drawing particular attention to anything. He would support the text as originally drafted, but if an additional element was considered necessary, he would go along with a formulation along the lines of that proposed by Mr. Vázquez-Bermúdez.

Mr. Park said that perhaps one solution would be to move the last sentence of paragraph (14) — "The words 'in particular' are intended to acknowledge specific areas without necessarily limiting the list of potentially affected areas" — to paragraph (13) and insert it after the second sentence of that paragraph.

The Chair suggested that the first and second sentences of paragraph (13) should be amended to read: "The sixth preambular paragraph acknowledges one of the most profound impacts of atmospheric degradation for all States, that is the sea-level rise caused by global warming. It draws particular attention to the situations of low-lying coastal areas and small island developing States."

Mr. Tladi said that he supported the Chair's proposal.

Mr. Petrič said that he also agreed with the Chair's proposal.

Paragraph (13), as amended by the Chair, was adopted.

Paragraphs (14) to (16)

Paragraphs (14) to (16) were adopted.

Paragraph (17)

Mr. Tladi proposed the deletion of the last sentence of the paragraph, as it was not appropriate at that stage of the Commission's work to indicate there or elsewhere in the document that it would be revisiting such matters.

The Chair said that he agreed, as it was understood that the version adopted on first reading was, by definition, susceptible to revision on second reading.

Mr. Murase (Special Rapporteur) said that the content of the last sentence of paragraph (17) had originally been in a footnote to the eighth preambular paragraph; he considered it to be of special significance and wished to retain it.

Mr. Nolte said that he supported the position of the Special Rapporteur. While it was true that, in principle, everything adopted on first reading was subject to revision on second reading, there were certain matters that the Commission had specifically agreed that it would review. The Special Rapporteur was entitled to have a few references to those points, which would also draw the attention of States to issues that were considered relevant by him.

Mr. Murphy said that he agreed with Mr. Tladi's proposal. While that information had previously been contained in a footnote, the Commission had now moved on to a different stage of its work on the topic and had deleted the footnote during the *toilettage* in the first part of the session. The Commission had now taken the decision about the location and terminology of the paragraph, so that sentence was no longer necessary. Obviously, changes might be made on second reading, but the Commission was not yet at that point. While he was sympathetic to the Special Rapporteur's position, that sentence seemed to send a signal to the Sixth Committee that the Commission had not finished the process, when in fact it had finalized a full first draft, which would be reviewed as a whole in two years' time based on the views of States.

Mr. Murase (Special Rapporteur) said that it had been his understanding that the footnote accompanying the preamble itself would be deleted but that the sentence would appear in the commentaries so that it could be brought to the attention of delegates in the Sixth Committee. He hoped that the sentence would be retained and that the Commission could discuss the matter on second reading.

Mr. Tladi said that, although he understood the Special Rapporteur's concern and agreed with him on the substance of the issue, that sentence did not actually make a substantive point and seemed strange and out of place in that paragraph. He would be interested to know whether there was any example of the Commission's having previously included such a statement on any topic finalized on first reading.

Mr. Nolte said that he was confident that there would be a precedent for including such a statement at least in a footnote.

The Chair said that, even if no precedent existed, the Commission could start a new one. He took it that the Commission wished to move the last sentence of the paragraph to a footnote.

It was so decided.

Paragraph (17), as amended, was adopted.

The meeting rose at 12.55 p.m.